

## **5.02 Non-Conforming Lots, Uses and Structures**

5.02.1 Intent. Within the districts established by these Regulations, there exist lots, structures, uses of land and structures, and characteristics of use, which were lawful before these Regulations were adopted or amended, but which would be prohibited, regulated or restricted under terms of these Regulations or future amendments. It is the intent of these Regulations that non-conformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same District.

Non-conforming uses are declared by these Regulations to be incompatible with permitted uses in the district involved. However, to avoid undue hardship, nothing in these Regulations shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction lawfully began prior to the effective date of adoption or amendment to these Regulations and which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

5.02.2 Non-Conforming Parcels of Record. In any District, structures permitted in said district may be erected on any non-conforming parcel which was of record on the effective date of these Regulations. All other requirements and restrictions of the District apply to a parcel of record that does not meet parcel area requirements.

A non-conforming parcel of land shall not be divided or changed in any way to reduce the area of the original parcel or increase its non-conformity.

5.02.3 Non-Conforming Uses of Land. Where at the time of the adoption of these Regulations lawful use of land exists which would not be permitted by these Regulations, the use may be continued so long as it remains otherwise lawful, provided:

1. A legal non-conforming use shall not be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of these Regulations.
2. A legal non-conforming use shall not be moved in whole or in part to any portion of the lot or parcel not occupied by such use at the effective date of adoption or amendment of these Regulations.
3. If any such non-conforming use of land ceases for any reason for a period of more than 24 months, any subsequent use of such land shall conform to these Regulations classified by these Regulations for the District in which the land is located. If a seasonal use ceases for the use of two (2) consecutive seasons, then subsequent use of such land shall conform to these Regulations.

4. Any non-conforming use of land superseded by a permitted use shall thereafter conform to these Regulations of the District in which it is located and the non-conforming use may not thereafter be resumed.

5.02.4 Non-Conforming Structures. Where a lawful structure exists at the effective date of adoption or amendment of these Regulations that could not be built under the terms of these Regulations by reason of restriction on parcel, area, height, yards, its location on the parcel, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. A legal non-conforming structure shall not be altered or enlarged in any way, which increases its non-conformity however, any structure or portion thereof may be altered to decrease its non-conformity without approval from the County Commission.
2. Should such non-conforming structure or non-conforming portion of a structure be destroyed by a catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and does not require prior approval by the County Commission. Any use or structure which is not substantially the same as the original use or structure shall conform with the applicable provisions of these Regulations and applicable federal, state, and local building codes.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to these Regulations.
4. Any legal non-conforming structure altered to conform to the regulations of the District in which it is located shall thereafter remain in conformance with these Regulations.
5. Property owners of legally existing non-conforming structures may apply for a Conditional Use Permit (CUP) pursuant to Section 5.04 for approval to change, alter, enlarge, or expand a non-conforming structure prior to changes to the non-conforming structure.

5.02.5 Non-Conforming Uses of Structures. If a lawful use of a structure, or of structures and premises exists at the effective date of adoption or amendment of these Regulations that would not be allowed in the District under the terms of these Regulations, the lawful use may be continued so long as it remains otherwise lawful provided that:

1. An existing structure devoted to a legal non-conforming use shall not be enlarged, extended, constructed, or structurally altered. A non-conforming use of a structure may change to a permitted use.
2. Any non-conforming use may be extended to any other part of a structure designed for such use, but no such use may be extended in any way to occupy land outside the structure.

3. Any legal non-conforming use superseded by a permitted use shall thereafter conform to the regulations of the District in which it is located and the non-conforming use may not thereafter be resumed.
4. If a non-conforming use of a structure ceases for a period of more than 24 months, except for seasonal uses, any subsequent use of such structure shall conform to the regulations of the District in which it is located. If a seasonal use ceases for the use of two (2) consecutive seasons, then subsequent use of land shall conform to regulations of the District in which it is located.
5. If a non-conforming use is destroyed by catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner, as it existed prior to destruction. Reconstruction of a non-conforming use does not require prior approval of the County Commission. Any use that is not substantially the same as the original use shall conform with the applicable provision of these Regulations and applicable federal, state, and local building codes.

5.02.6 Repairs and Maintenance. On any non-conforming structure or portion of the structure containing a non-conforming use, work may be done on ordinary repairs and fixtures, wiring, plumbing, or repair or replacement of non-load-bearing walls, to the extent not to exceed 15 percent of the replacement value of the building in any one (1) year, provided that such work does not increase the cubic content of the building. The 15 percent does not apply to an interior or exterior remodel that does not increase the cubic content or increase the building footprint of the structure. Nothing in these Regulations shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official or other person qualified to make such a declaration.

5.02.7 Determination of Status of Non-Conforming Land Uses and Structures. It shall be the responsibility of the Zoning Enforcement Agent and Code Compliance Specialist to determine the status of non-conforming land uses and structures. If the Zoning Enforcement Agent determines that a use or structure meets the applicable criteria in these Regulations and above, the use or structure shall be deemed an Approved Non-Conforming Land Use or Approved Non-Conforming Structure. The following procedures shall be followed to determine the status of non-conforming land uses and structures.

1. The owner of record of the subject use or structure shall make an application for a determination of the status of a land use or structure.
2. It shall be the burden of the applicant to prove entitlement to approved non-conforming status by furnishing the Zoning Enforcement Agent and Code Compliance Specialist with a preponderance of supporting information. Such information shall include, but not be limited to, septic or sewer hook-up permits, building permits, business licenses, knowledge of the past history of the site and dated photographs.

3. The Zoning Enforcement Agent and Code Compliance Specialist shall determine on a case-by-case basis whether a land use or structure is an existing non-conforming use or existing non-conforming structure.
4. Appeals of the Zoning Enforcement Agent and Code Compliance Specialist's decision may be made in accordance with the provisions of the Appeals Process, Section 5.08.
5. The Zoning Enforcement Agent and/ or Code Compliance Specialist shall maintain a record of existing non-conforming uses and structures as such information becomes available.